



POLICE DEPARTMENT

March 4, 2019

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In the Matter of the Charges and Specifications :
- against - :
Police Officer Ernst Hyacinthe : Case No.
Tax Registry No. 936791 : 2018-19269
Police Service Area 7 :
-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Ernst Hyacinthe, while assigned to PSA 7, while off-duty, on or about March 20, 2018, in Kings County, was wrongfully and without just cause absent from his residence without the permission of said officer's District Surgeon and/or Medical Division.

P.G. 205-01

REPORTING SICK – PERSONNEL
MATTERS

Operations Order #42, 2016

Pilot Program-Home Confinement While on
Sick Leave

2. Said Police Officer Ernst Hyacinthe, while assigned to PSA 7, while off-duty, on or about March 20, 2018, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer caused false entries to be made in the Out of Residence Log at the Medical Division.

P.G. 203-05 Page 1, Paragraph 4

PERFORMANCE ON DUTY – GENERAL

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 28, 2019. Respondent, through his counsel, entered pleas of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having carefully reviewed all testimony and evidence in this matter, I find Respondent Guilty of Specifications 1 and 2. I further recommend that he forfeit 20 vacation days and be subject to a one-year period of dismissal probation.

ANALYSIS

Respondent admitted under oath that on March 20, 2018, he was wrongfully absent from his residence without the permission of the Medical Division. Respondent admitted further that on the same date, he caused a false entry to be made in the Medical Division Out-of-Residence log.

Respondent testified that on March 20, 2018, he genuinely believed that he had a medical appointment with his physician at 1430 hours. Respondent contacted the Medical Division, informed them that he had a medical appointment at that hour and received permission to leave his residence for that purpose (Resp. Ex. A). After he had left his residence, Respondent contacted his

physician's office to advise them that he was *en route*; when he did so, the physician's office advised him that he was in error and that he had an appointment for March 23, 2018, rather than that afternoon.

Upon being informed that he had made a mistake, Respondent did not contact the Medical Division and inform them that he had mistakenly obtained authorization to leave his residence on the wrong day; instead, he proceeded to his [REDACTED] residence, where he spent several hours. At approximately 1630 hours, Respondent received a telephone call from Sergeant Doreen Hand, who informed him that she was at his residence conducting a random check. Sergeant Hand asked Respondent where he was, to which Respondent indicated that he was at his [REDACTED] residence and that he would meet her shortly. Respondent eventually met Sergeant Hand at his residence at 1654 hours.

Respondent testified that he was aware that he had an obligation, based upon his limited duty status, to request permission from the Medical Division before leaving his residence (Dept. Ex. 1). He was unsure of whether he had a concurrent obligation to do so because of his status of being "Chronic Sick B" status. Respondent also acknowledged that he should have contacted the Medical Division as soon as he became aware that the original reason he proffered for leaving his residence was based upon an error.

Respondent first claimed that he was feeling unwell, so he went to check on his [REDACTED]. Respondent later testified that on his way to the medical appointment he suffered a bout of "vertigo;" once he learned that his appointment was actually for another day, he decided to go to his [REDACTED] home until the "vertigo" dissipated. When pressed on whether he had been diagnosed with "vertigo," Respondent stated that he meant that he experienced dizziness. Respondent conceded that he experienced the dizziness while he drove to the medical appointment and that he continued driving to his [REDACTED]'s residence while suffering the effects of this

condition. Respondent also testified that when he left his residence that evening to attend church services, he was still feeling light-headed but not as much as he had experienced earlier in the day. While Respondent claimed that he suffered from chronic back pain due to herniated disks, when questioned by the Tribunal as to the illness that occasioned his limited duty status on March 16, 2018, Respondent could not recall what it was.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

In previous cases, respondents have forfeited up to 30 vacation days, 10 suspension days and been placed on dismissal probation for abusing sick leave by leaving their residence without permission, as well as making misleading statements (*Disciplinary Case No.* [REDACTED])

[REDACTED] Fifteen-year police officer negotiated a penalty of 20 vacation days, 10 suspension days, and one year dismissal probation for (i) being outside his residence without permission or authority, and (ii) making misleading and inaccurate statements to a Medical Division Supervisor by stating that he was home, when he was over two hours away from his residence]; *Disciplinary Case No.* [REDACTED] Five-year police officer with no prior formal

disciplinary history negotiated a penalty of 20 vacation days for being absent from his residence without permission while on sick leave]; *Disciplinary Case No.* [REDACTED]

[REDACTED] Thirteen-and-a-half-year sergeant with no prior disciplinary record negotiated a penalty of 30 vacation days, 30 days already served on suspension without pay, forfeits 117 hours and 22 minutes from his time/leave balance and is placed on one year dismissal probation for failing to return to work from sick report when directed to do so and for providing misleading and

inaccurate information. The Respondent gave the Precinct Desk Officer the Finest Control Number from a previous sick report which allowed him to remain out sick longer)).

I find Respondent's formal disciplinary history to be an aggravating factor, particularly since he has two previous adjudications with significant penalties, the 2013 case resulting in him being placed on a one-year period of monitoring.

I find the testimony Respondent offered in mitigation vague and confusing. Respondent's supposed uncertainty about the reason for being out on limited duty, as well as the genesis of his professed vertigo condition, weigh against his credibility. While I credit his acceptance of responsibility for failing to immediately notify the Medical Division of his purported scheduling error, and to correct his initial rationale for requesting permission to leave his home, I find his attempts to explain his diversion to his mother's residence strain credulity. By failing to notify the Department of the change in circumstances regarding his appointment, I find that he abused his sick leave by being outside his residence without permission. I further find that such conduct was prejudicial to the good order of the Department by causing false entries to be made in Department records. As a 14-year Member of Service, Respondent must be held to a high standard regarding his basic responsibilities to this Department.


I therefore recommend that Respondent forfeit 20 vacation days and be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for a period of one year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

APPROVED

MAR 15 2019

JAMES P. O'NEILL
POLICE COMMISSIONER

Respectfully submitted,


Paul M. Gamble
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ERNST HYACINTHE
TAX REGISTRY NO. 936791
DISCIPLINARY CASE NO. 2018-19269

Respondent was appointed to the Department on January 10, 2005. On his last three annual performance evaluations, he received overall ratings of 2.5 "Below Competent" for 2014 and 2015, and an overall rating of 3.0 "Competent" for 2013.

In 2011, Respondent forfeited forty (40) vacation days for (i) leaving his service weapon under the seat of his personal vehicle; (ii) failing to carry his shield while off-duty and armed, and (iii) displaying his Department parking plaque and parking in violation of traffic regulations.

In 2013, Respondent forfeited thirty (30) vacation days and was placed on one-year dismissal probation for (i) being discourteous to an on-duty supervisor while off-duty; (ii) failing to safeguard his shield and ID card; (iii) failing to identify himself to an on-duty sergeant; (iv) filing complaint reports with inaccurate information; and (v) failing to safeguard his Department ID card.

Respondent also has a substantial monitoring history. He was placed on Level 1 Performance Monitoring from April 28, 2009 to February 16, 2010 due to negative performance evaluations. This was upgraded to Level 2 Performance Monitoring from February 16, 2010 until March 20, 2013. Respondent was again placed on Level 2 Performance Monitoring on March 14, 2016; that monitoring remains ongoing.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials